BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of revenue requirements and rate stabilization plan of SOUTHERN BELL.	DOCKET NO. 920260-TL
In re: Investigation into the integrity of SOUTHERN BELL'S repair service activities and reports.	DOCKET NO. 910163-TL
In re: Investigation into SOUTHERN BELL'S compliance with Rule 25-4.110(2), F.A.C., Rebates.	DOCKET NO. 910727-TL
In re: Show cause proceeding against SOUTHERN BELL for misbilling customers.	DOCKET NO. 900960-TL
In re: Request by Broward Board of County Commissioners for extended area service between Ft. Lauderdale, Hollywood, North Dade and Miami.	DOCKET NO. 911034-TL ORDER NO.PSC-93-1403-CFO-TL ISSUED: September 27, 1993

ORDER GRANTING IN PART AND DENYING IN PART SOUTHERN BELL'S MOTION FOR CONFIDENTIAL CLASSIFICATION FOR PORTIONS OF DOCUMENT NOS. 5996-93, 5998-93, 6000-93, 6002-93, 6004-93, 6006-93, 6008-93, 6010-93
(DOCKET NO. 910163-TL)

On June 3, 1993, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Motion for Confidential Classification and Permanent Protective Order for portions of the deposition transcripts of Southern Bell employees Dorothy Howarth, Laura Farmer, Eileen Henry, Shirley Parker, Susie Robinson, Susan Cole, Marjorie Gray and John Faller. (Southern Bell's motion).[1] The deposition transcripts, with the information for which the Company is requesting confidential treatment highlighted, was filed by Southern Bell with the Commission's Division of Records

[1] Southern Bell filed a Notice of Intent to seek confidential classification for these deposition transcripts on May 13, 1993.

and Reporting on June 3, 1993 as Attachment "B" to Southern Bell's motion. The deposition transcripts were assigned Document Nos. 5996-93 (Dorothy Howarth), 5998-93 (Laura Farmer), 6000-93 (Eileen Henry), 6002-93 (Shirley Parker), 6004-93 (Susie Robinson), 6006-93 (Susan Cole), 6008-93 (Marjorie Gray) and 6010-93 (John Faller).

Deposition transcripts filed by telecommunications companies with the Commission are public records subject to public disclosure under Section 119.07(1), Fla. Stat. (1991) of Florida's Public Records Law. Section 119.07(3), Fla. Stat., however, exempts from public disclosure those public records that are provided by statutory law to be confidential or which are expressly exempted by general or special law. In the absence of a specific statutory exemption, the Commission may not deny disclosure based upon a judicially created privilege of confidentiality[2] or based upon public policy considerations which attempt to weigh the benefits to be derived from public disclosure against the detriment to an individual institution resulting from such disclosure.[3]

The legislature sets forth exemptions to the disclosure requirements of Florida's Public Records Law with regard to information received by the Commission from telecommunications companies in Section 364.183, Fla. Stat (1991). Section 364.183 exempts "proprietary confidential business information" from the disclosure requirements of Section 119.07(1). Section 364.183(3) defines "proprietary confidential business information" as information owned or controlled by the Company, intended to be and treated by the Company as private in that disclosure of the information would cause harm to the ratepayers or the Company's business operations, and not disclosed unless pursuant to a statutory provision, court or administrative order or private nondisclosure agreement. Section 364.183(3) then enumerates specific categories of information which are designated by the

---

[2] Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla. 1979).

[3] Id.; News-Press Publishing Co., Inc. v. Gadd, 388 So.2d 276 (Fla. 2d DCA 1980); Gadd v. News-Press Publishing Co., 412 So.2d 894, 895 (Fla. 2d DCA 1982); Douglas v. Michel, 410 So.2d 936 (Fla. 5th DCA 1982); State ex rel. Veale v. City of Boca Raton, 353 So.2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So.2d 1247 (Fla. 1978).

legislature as "proprietary confidential business information." In support of its instant motion, Southern Bell relies on the exemption found in Subsection (f) of Section 364.183(3) which provides that "proprietary confidential business information" includes "[e]mployee personnel information unrelated to compensation, duties, qualifications or responsibilities."[4]

In the instant motion, the Company seeks confidential classification for portions of the deposition transcripts which disclose the home addresses and home telephone numbers of Southern Bell employees; portions of the deposition transcripts which disclose information found in Southern Bell's Supplemental Answers to Public Counsel's Third Interrogatories and; instances where the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in improper activity. Southern Bell argues that this information is "employee personnel information unrelated to compensation, duties, qualifications or responsibilities" and, therefore, it is "proprietary confidential business information" exempt from public disclosure by Subsection (f) of Section 364.183(3), Fla. Stat.

It appears that the home addresses and home telephone numbers of Southern Bell employees is employee personnel information unrelated to their duties or responsibilities as a Southern Bell employee and, therefore, it is information exempt from public disclosure by Subsection (f) of Section 364.183(3), Fla. Stat.[5] Hence, Southern Bell's request is granted for the

---

[4] Pursuant to Section 364.183, Fla. Stat. and Fla Admin. Code Rule 25-22.006, Southern Bell has the burden of demonstrating that information is qualified for confidential classification. Rule 25-22.006 provides that Southern Bell may fulfill its burden of showing that the information is "proprietary confidential business information," as defined in Section 364.183, by showing the information is one of the statutory examples set forth therein or by demonstrating disclosure of the information will cause harm to Southern Bell or its ratepayers.

[5] Order No. PSC-93-0978-CFO-TL (Prehearing Officer's prior ruling in this docket that the home addresses and home telephone numbers of former employees who were disciplined by the Company is employee personnel information unrelated to their duties or responsibilities as a Southern Bell employee and, therefore, it is

home addresses and home telephone numbers of Southern Bell employees found in the deposition transcripts.

Southern Bell seeks confidential classification under Subsection (f) of Section 364.183(3), Fla. Stat. for portions of the deposition transcripts which disclose information found in Southern Bell's Supplemental Answers to Public Counsel's Third Interrogatories. Southern Bell previously sought confidential classification for this information in its motion for confidential classification filed on April 16, 1993. In the instant motion, Southern Bell incorporates by reference the arguments it raised in its April 16, 1993 motion. In ruling on the April 16, 1993 motion in Order No. PSC-93-1046-CFO-TL, the Prehearing Officer denied Southern Bell's motion for confidential classification for this information. Accordingly, Southern Bell's request is denied with regard to those portions of the deposition transcripts which disclose information found in Southern Bell's Supplemental Answers to Public Counsel's Third Interrogatories.

Finally, Southern Bell seeks confidential classification for portions of the deposition transcripts wherein "the deponent identifies specific Southern Bell employees by name and alleges that these employees may have engaged in some improper activity."[6] These allegations as to specific employees, the Company argues, is information exempt from public disclosure by Subsection (f) of Section 364.183(3), Fla. Stat. Hence, the Company's contention is that the identities of employees who allegedly engaged in improper activity in the performance of their jobs is "employee personnel information unrelated to [their] . . . duties . . . or responsibilities" as a Southern Bell employee.

---

information exempt from public disclosure by Section 364.183(3)(f), Fla. Stat.); Order No. PSC-93-1044-CFO-TL (Prehearing Officer's prior ruling in this docket that the home addresses of current and former employees is employee personnel information unrelated to their duties or responsibilities as a Southern Bell employee and, therefore, it is information exempt from public disclosure by Section 364.183(3)(f), Fla. Stat.).

[6] Southern Bell's motion at pp. 3-4.

Southern Bell argues that this information is unrelated to a "common sense reading" or the dictionary definitions of the words "duties" and "responsibilities."[7] Despite Southern Bell's argument to the contrary, it appears that the identities of employees who allegedly engaged in improper activity in the performance of their jobs is information related to those employees' "duties" and "responsibilities." The words "duties" and "responsibilities" certainly includes activities related to the performance of an employee's job, including information concerning the alleged improper performance of an employee's job.

Southern Bell argues that allegations that an employee improperly performed his job is information not related in a "strict sense" to an employee's duties and responsibilities.[8] Southern Bell contends that while "these allegations of wrongdoing could relate to a very broad definition of the employee's responsibilities or duties . . . [t]his interpretation would require that 'duties' or 'responsibilities' be taken to describe not only the specific parameters of the employee's job, but also any act, whether authorized or not, that the employee does while on the job."[9] Southern Bell contends that such an interpretation is inconsistent with the language of the exemption and with the legislature's intended application of the exemption. Southern Bell claims the legislature expressed its intended application of exemptions to Florida's Public Records Law in the Open Government Sunset Review Act, Section 119.14(4)(b)(2), Fla. Stat.

Southern Bell contends that if the Prehearing Officer interprets Subsection (f) of Section 364.183(3), Fla. Stat. to require "public disclosure of any employee information that bears a relationship, even of an indirect or tangential nature to an employee's job responsibilities, or duties, then there would be literally nothing protected from disclosure."[10] Southern Bell contends that a "broad reading" of Subsection (f) of Section 364.183(3), Fla. Stat. "would reduce the public disclosure

---

[7] Southern Bell's motion at p. 4.

[8] Southern Bell's motion at p. 5.

[9] Id. at p. 5.

[10] Id. at p. 5.

exemption for employee information to the point of nonexistence."[11] The Company contends that "if the legislature had intended for this statute to be read in a way that would make the employee information exemption uniformly unavailable and essentially pointless, then it would simply not have bothered to create the exemption in the first place."[12] Hence, Southern Bell argues that the exemptions must be "narrowly construed and applied."[13] The Company argues that, "[c]onsistent with this narrow application, these unproven allegations of wrongdoing must be viewed as outside the scope of these employees' responsibilities and duties."[14] The narrow application of this exemption to Florida's Public Records Law, the Company contends, is consistent with normal rules of statutory construction and with the legislature's intended application of the exemption.

Southern Bell contends that "the unnecessary public disclosure of the names of employees who allegedly engaged in misconduct would have the potential effect of subjecting them to public opprobrium and scorn at a point in this docket at which there has been no finding that any wrongful conduct actually occurred."[15] Such a result, Southern Bell contends, is contrary to the legislature's intended application of the exemption.

Moreover, Southern Bell argues that since this docket has already resulted in widespread publicity to Southern Bell, it is probable that public disclosure of the identities of these employees would also be widely published. The Company contends that this disclosure is unnecessary where the public will have access to all information relating to the alleged improper acts except for the names of the employees involved.

With regard to Southern Bell's suggestion that the exemption to public disclosure found in Subsection (f) of Section 364.183(3), Fla. Stat. is to be interpreted in favor of

---

[11] Southern Bell's motion at p. 5-6.

[12] Southern Bell's motion at p. 6.

[13] Id. at p. 6.

[14] Id. at p. 6.

[15] Southern Bell's motion at p. 7.

nondisclosure of information, it is noted that Florida's Public Records Law is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so that they are limited to their stated purpose.[16] Despite Southern Bell's assertion to the contrary, it is clear that the exemption found in Subsection (f) of Section 364.183(3) for "employee personnel information unrelated to . . . duties . . . or responsibilities" is to be narrowly construed in favor of public disclosure.

With regard to Southern Bell's contention that a "broad reading of the exemption would cover virtually any activity while on the job," it is noted that the Prehearing Officer applies exemptions to Florida's Public Records Law on a case-by-case basis. In this instance, the Prehearing Officer has applied the exemption to the information which is the subject of this specific request for confidentiality. In ruling on this specific request, the Prehearing Officer is not expressing an opinion on whether any activity while on the job is related to performance of that employee's duties or responsibilities.

Finally, the Open Government Sunset Review Act, Section 119.14, Fla. Stat., is the criteria applied by the legislature in its determination of whether an exemption to Florida's Public Records Law will be created or readopted. The Open Government Sunset Review Act provides that exemptions may be created or maintained only if they serve an identifiable public purpose and may not be broader than neccessary to accomplish that purpose. In addition, the exemption must be considered by the legislature to be sufficiently compelling to override the strong public policy of open government. All exemptions are periodically reviewed in accordance with these criteria.

A public purpose is served if the record to be exempted is of a sensitive, personal nature concerning individuals. Subsection (4)(d)(2) of the Open Government Sunset Review Act

---

[16] Seminole County v. Wood, 512 So.2d 1000 (Fla. 5th DCA 1987), pet. for rev. denied, 520 So.2d 586 (Fla. 1988); Tribune Company v. Public Records, 493 So.2d 480 (Fla. 2d DCA 1986), pet. for rev. denied sub nom., Gillum v. Tribune Company, 503 So.2d 327 (Fla. 1987); Bludworth v. Palm Beach Newspapers, Inc., 476 So.2d 775 (Fla. 4th DCA 1985), pet. for rev. denied, 488 So.2d 67 (Fla. 1986).

provides that an identifiable public purpose that will justify the creation or readoption of an exemption is when the exemption "protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals . . . ." Section 119.14(4)(b)(2), Fla. Stat. Southern Bell argues that, although this subsection does not create a statutory exemption from public disclosure, it provides insight into the legislative intent as to the proper application of existing exemptions, including Subsection (f) of Section 364.183(3), Fla. Stat.

The Prehearing Officer presumes that the legislature has considered these criteria in its decision to readopt the exemption to Florida's Public Records Law for "employee personnel information unrelated to . . . duties . . . and responsibilities" found in Subsection (f) of Section 364.183(3), Fla. Stat. It is not presumed that the Open Government Sunset Review Act imposes a requirement which has not been expressed by the legislature in the statute which exempts the information from public disclosure.

Southern Bell argues that the legislature did not intend that the exemption for "employee personnel information unrelated to . . . duties . . . and responsibilities" would be applied with the result that employees could be exposed to public ridicule on the basis of unproven allegations. However, the Open Government Sunset Review Act, relied on by Southern Bell, does not impose a requirement that there be a "finding" by the Commission that Southern Bell employees engaged in improper activity in the performance of their jobs before the information is subject to public disclosure.

Under Florida's Public Records Law, deposition transcripts filed with the Commission are subject to the examination and inspection provisions of Section 119.07(1), Fla. Stat. unless a specific statutory provision can be pointed to which exempts those records from disclosure. The possibility that employees could be exposed to public ridicule based on allegations that the employees engaged in improper activity in the performance of their jobs, under circumstances where there has been no "finding" of fact by the Commission that these employees engaged in such activity, does not make the information unrelated to the employees' duties or responsibilities. It is clear that allegations that employees engaged in improper activity in the

performance of their jobs is information related to the employees' duties or responsibilities.

Although the Prehearing Officer does exercise discretion in interpreting an exemption, the Prehearing Officer is bound to follow the language of the exemption in light of the fact that exemptions are to be narrowly construed in favor of public disclosure. In this instance, those portions of the deposition transcripts where the deponent identifies individuals who allegedly engaged in improper activity is information related to the performance of the employees' jobs and, therefore, it is employee personnel information which is related to the employees' duties or responsibilities. The Prehearing Officer has arrived at this conclusion after applying the language of the statute and in light of the fact that the exemption is to be narrowly construed in favor of public disclosure.

The issue is whether Southern Bell can point to a specific statutory provision which exempts the information from public disclosure. The fact that the public could have access to all information other than the names of the employees allegedly involved in improper activity in the performance of their jobs is not a relevant factor in deciding the issue of whether the information falls under an exemption.

Although Southern Bell has not specifically argued that disclosure of the information will result in harm to the Company or its ratepayers, it is noted that the Prehearing Officer has found that embarrassment of employees and the potential impact on Company operations is not the type of harm contemplated by Section 364.183(3), Fla. Stat., which would exempt the information from public disclosure.[17]

---

[17] Order No. PSC-93-0905-CFO-TL; Order No. PSC-93-0979-CFO-TL; Southern Bell Telephone and Telegraph Company v. Beard, 597 So.2d 873 (Fla. 1st DCA 1992) (held that the Commission did not abuse its discretion by declining to afford proprietary confidential business status for Southern Bell documents despite Company's contention that disclosure might result in embarrassment to Company's managers); In re Investigation into the Integrity of Southern Bell Telephone and Telegraph Company's Repair Service Activities and Reports, 92 F.P.S.C. 9:470 (1992) (Prehearing Officer's prior ruling in this docket rejects embarrassment of employees and its potential impact on Company operations as the type of harm

Based on the foregoing, Southern Bell's motion for confidential classification is granted for the information found in the deposition transcripts identified by document nos., page nos. and line nos.:

Document Nos.	Page Nos.	Line Nos.
5996-93 (Howarth)	6	10, 11, 15
5998-93 (Farmer)	7	11, 12, 16, 18, 20
6000-93 (Henry)	6	11, 13, 15
6002-93 (Parker)	7	14, 16, 18
6004-93 (Robinson)	7	10, 12
6006-93 (Cole)	7	10, 11, 13, 15
6008-93 (Gray)	6	14, 15, 17
6010-93 (Faller)	6	13, 14, 16

Southern Bell's motion for confidential classification is denied for the information found in the deposition transcripts identified by document nos., page nos. and line nos.:

Document Nos.	Page Nos.	Line Nos.
6002-93 (Parker)	29	23-25
	30	2
6004-93 (Robinson)	18	21, 22, 25
	19	1

---

contemplated by Section 364.183(3), Fla. Stat., with regard to internal self-critical reports of Company operations); Cf. News-Press v. Wisher, 345 So.2d 646, 648 (Fla. 1977) ("No policy of the state protects a public employee from the embarrassment which results from his or her public employer's discussion or action on the employee's failure to perform his or her duties properly.").

Document Nos.	Page Nos.	Line Nos.
6006-93 (Cole)	20	22, 23
	21	6-8
	22	8-10
6008-93 (Gray)	37	4-6
6010-93 (Faller)	24	6-8, 17-24
	26	19-21

Accordingly, it is, therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that Southern Bell's Motion for Confidential Classification for Document Nos. 5996-93, 5998-93, 6000-93, 6002-93, 6004-93, 6006-93, 6008-93 and 6010-93 is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that pursuant to Section 364.183, Fla. Stat., and Fla. Admin. Code Rule 25-22.006, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 27th day of September, 1993.

Susan F. Clark

SUSAN F. CLARK, Commissioner and Prehearing Officer

(S E A L)
JRW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Fla. Stat. (1991) to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Fla. Stat. (1991 & 1992 Supp.) as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this Order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Fla. Admin. Code Rule 25-22.038(2), if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Fla. Admin. Code Rule 25-22.060, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Fla. Admin. Code Rule 25-22.060. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Fla. R. App. P. 9.100.